

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 1:07cr73-LG-RHW-002

MICHAEL ALLEN GLADNEY

**ORDER DENYING MOTION FOR SENTENCE
REDUCTION UNDER 18 U.S.C. § 3582(c)(2)**

This cause is before the Court on the *pro se* motion of the Defendant, Michael Allen Gladney, for retroactive application of the sentencing guidelines to his sentence [61] pursuant to 18 U.S.C. § 3582(c)(2) based upon recent amendments to the sentencing guidelines applicable to offenses involving cocaine base, and the subsequent decision by the United States Sentencing Commission [Sentencing Commission] to make this amendment retroactive, pursuant to United States Sentencing Guideline § 1B1.10 [USSG] effective March 3, 2008.

Gladney entered a guilty plea to count 5 of the indictment on November 8, 2007. (Ct. R.) Gladney was sentenced on February 8, 2008, to term of 43 months imprisonment, a period of supervised release of 3 years, and assessed \$100. (Ct. R., Doc 46, pp. 2-3, 6.) Effective November 1, 2007, the Sentencing Commission decreed that Amendment 706, reducing offense levels for crack cocaine offenses, would be retroactively applicable to cases final before the Amendment's November 1, 2007, effective date. *See United States Sentencing Commission Guidelines Manual, Supplement to Appendix C 226-31 (2007) (Amendment 706)*. Here, the sentence was imposed after the effective date of the amendment and was not effected by Amendment 706.

The Court's authority under 18 U.S.C. § 3582(c)(2) and Federal Rule of Criminal Procedure 43(b)(4) to reduce a sentence extends to situations where the sentencing range has been lowered. There has been no change in the sentencing range under the guidelines utilized to impose Gladney's sentence, thus he is not entitled to a reduction of his 43 month term of imprisonment. The Court, therefore, finds that a reduction in Gladney's term of imprisonment is not authorized under 18 U.S.C. § 3582(c) and that his motion should be denied.

IT IS THEREFORE ORDERED that the motion for change in sentence [61] pursuant to 18 U.S.C. § 3582(c)(2) be and is hereby denied.

SO ORDERED AND ADJUDGED this the 27th day of August, 2008.

s/ Louis Guirola, Jr.

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE